

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.1909 OF 2014

Sandip Ganpat Kalbhor & Ors.	.. Petitioners
Vs.	
Dattatraya Namdeo Katre & Ors.	.. Respondents

Mr.Sumit Khaire for the petitioners.
Mr.N.R. Bubna for the respondent nos.1 & 2.

CORAM : R.D. DHANUKA, J.
DATE : 10th September 2018

P.C.:

. By this petition filed under Article 227 of the Constitution of India, the petitioners have impugned the order dated 6th December 2013 passed by the 23rd Joint Civil Judge, Junior Division, Pune at Exhibit-39 rejecting the application filed by the petitioner no.1 (original plaintiff) to lead secondary evidence in respect of the release deed dated 21st December 1989.

2. Learned trial Judge has rejected the application on the ground that the said application was not filed with an affidavit of the plaintiff enumerating as to how two documents were proposed to be proved by secondary evidence and also on the ground that the plaintiff had not signed the said application contending that the documents were lost. However, in paragraph 5 of the impugned order, the learned trial Judge has held that the plaintiff had not led any foundation before production of secondary evidence or for seeking permission to lead secondary evidence.

3. Learned counsel for the petitioners placed reliance on the judgment of this Court in the case of ***Karthik Gangadhar Bhat Vs. Nirmala Namdeo Wagh & Anr., 2017(6) Bom.C.R. 554*** in support of the submission that filing of an application for permission to lead the secondary evidence under Section 65 of the Indian Evidence Act, 1872 is not necessary. The said judgment applies to the facts of this case.

4. In my view, the petitioners shall be given an opportunity to lay foundation before production of secondary evidence. If any such foundation is laid during the course of his evidence, the learned trial Judge shall permit the petitioners to lead secondary evidence if the same is in compliance with Section 65 of the Indian Evidence Act, 1872. The impugned order dated 6th December 2013 passed by the 23rd Joint Civil Judge, Junior Division, Pune is accordingly quashed and set aside. Writ petition is allowed in aforesaid terms. No order as to costs.

R.D. DHANUKA, J.